

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING
DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration (MECA) in regard to Child Care, a rehearing was held on August 19, 2015, at Milwaukee, Wisconsin. The petitioner failed to appear for her July 8, 2015 hearing, and her appeal was dismissed as abandoned. The petitioner requested a rehearing and provided good cause. DHA granted a rehearing for the petitioner. At the request of the parties, the record was held open for written closing argument to DHA by the Department by August 26, 2015, and then for the petitioner's written response to DHA by September 2, 2015. The Department timely submitted its closing argument to DHA. The petitioner failed to submit any written closing argument to DHA by September 2, 2015 or even by the date of this decision.

The issue for determination is whether the petitioner was overissued \$1,832.44 in child care benefits during the period of July 6, 2014 to December 31, 2014, which are subject to recovery because petitioner failed to timely notify the county agency that her temporary employments ended, and she was not participating in any other approved W-2 activities.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], child care overpayment worker
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who has a daughter, YH, who resides in her household.
2. The petitioner was authorized for W-2 child care for her daughter due to her temporary employments at the following employers: [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
3. The county agency sent a Child Care Authorization notice to the petitioner authorizing her child, YH, for 40 hours per week of child care. That notice required the petitioner to promptly inform the county agency to report if she was no longer employed.
4. The petitioner failed to timely report to the agency the following endings of her temporary employments: a) her employment at [REDACTED] ended on June 14, 2014; b) her employment at [REDACTED] began August 21, 2014, but ended October 25, 2014; c) her employment at [REDACTED] began on October 27, 2014 but ended on November 24, 2014; and d) petitioner had no employment during December, 2014.
5. The county agency paid a total of \$1,832.44 in overpayments to the child care provider for the care of the petitioner's child in the following monthly overpayments: a) July, 2014 - \$859.80; b) August, 2014 - \$246.24; c) September, 2014 - \$195.85; and d) December, 2014 - \$531.54.
6. The petitioner was not working or actively participating in approved Wisconsin Works Program activities during most of the months during the period of July 6, 2014 to December 31, 2014, (except the months of October and November, 2014) while petitioner continued to have 40 hours per week of authorization for W-2 administered child care assistance for her child.
7. The Department issued a May 21, 2015 Child Care (CC) Overpayment Notification to the petitioner informing her that she had been overpaid \$1,832.44 in child care assistance from July 6, 2014 to December 31, 2014, because petitioner failed to timely notify the county that her temporary employments ended, and she was not participating in any other approved W-2 activities. As a result, she was not employed (or was working less hours than she received 40 hours per week of child care authorizations) or participating in any approved W-2 activities during most of the period that she was receiving childcare benefits for her child.
8. The petitioner's remaining child care overpayment amount is \$1,832.44, as no recoupment or repayment has occurred.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. WI Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development has changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, DWD Operations Memo, #03-66. See also WI Stat. § 49.152(2) & WI Stat § 227.42, et. seq.

The Department correctly determined that the petitioner was overpaid child care assistance because she failed to timely notify the county agency that her temporary employments ended. As a result, she was neither employed nor participating in approved W-2 activities. The county agency did not discover the changes in petitioner's temporary employments until about the period of May, 2015.

[REDACTED]

During the August 19, 2015 hearing and in its August 26, 2015 closing argument, the Department's child care overpayment representative presented a well-organized and documented case to support the child care overpayment. The Department correctly concluded that petitioner was not attending school for statutorily enumerated purposes, working in unsubsidized employment, receiving W-2, or participating in an approved W-2 position during the most of the overpayment period of the overpayment, while still using W-2 child care funds. See WI Stat § 49.155(1m) (a)1-5 and the Child Care Manual, Chapter 2, sec. 2.2.0, "Nonfinancial Eligibility."

During the hearing, petitioner did not dispute that the county agency paid for childcare benefits for her child during the overpayment period in question. The petitioner was unable to refute that she failed to timely notify the agency that her temporary employments ended as indicated in Finding of Fact # 4 above. The hearing record is clear that petitioner was neither employed nor participating in approved W-2 activities during most of the overpayment period in question, as indicated in Findings of Fact #2 - #7 above. The petitioner was also unable to refute the Department's case or the correctness of its calculation of her child care overpayment during the period in question. Moreover, petitioner failed to submit any written closing argument to DHA to refute the Department's closing argument. See above Preliminary Recitals. The petitioner was not eligible for W-2 child care payments during the period of July 6, 2014 through September, 2014, and then again for the month of December, 2014.

The Department is required to recover all overpayments of public assistance benefits pursuant to Wis. Stat. §49.195(3), 45 C.F.R. §233.20(a)(13)(I). Child care assistance is no exception. Child Care Manual, Ch. 1, §10.3.0. Accordingly, for the above reasons, the Department correctly determined that the petitioner was overissued \$1,832.44 in child care benefits during most of the period of July 6, 2014 to December 31, 2014 (not the months of October or November, 2014), which are subject to recovery because petitioner failed to timely notify the county that her temporary employments ended, and she was not participating in any other approved W-2 activity.

CONCLUSIONS OF LAW

1. The Department has correctly determined that the petitioner was not eligible for childcare benefits during most of the period from July 6, 2014 to December 31, 2014, as she was neither employed nor participating in approved W-2 activities due to failure to timely notify the agency that her temporary employments ended.
2. The Department correctly seeks to recover from the petitioner the \$1,832.44 in overpaid child care assistance.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

[REDACTED]

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

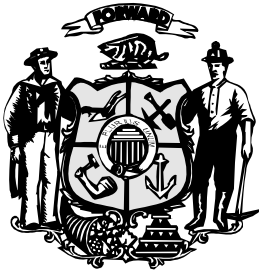
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of September, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 17, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud